

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOSEPH PHILLIPS)	
Claimant)	
VS.)	
)	Docket No. 216,989
THE PETERSON COMPANIES)	
Respondent)	
AND)	
)	
RELIANCE INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant requested Appeals Board review of the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on July 15, 1997.

ISSUES

In claimant's brief filed before the Appeals Board, claimant identified the issue for Appeals Board review as follows:

"Whether claimant sustained his burden of proof in determining his right to temporary total and temporary partial disability benefits?"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Before discussing the merits of claimant's appeal, the Appeals Board will first address the issue of whether it has jurisdiction at this juncture of the proceeding to review

this preliminary hearing Order. The only preliminary benefit that claimant requested was temporary total disability compensation to be paid from April 15, 1997, and continuing. Claimant included a request for temporary partial disability compensation in the issue that he raised before the Appeals Board. However, the Appeals Board finds that claimant did not make such a request before the Administrative Law Judge. Accordingly, the Appeals Board will not address the issue of whether temporary partial disability benefits should have been granted because the Appeals Board is limited in the review to only issues introduced before the Administrative Law Judge. See K.S.A. 44-555c(a), as amended. The Appeals Board also has held on previous occasions that temporary partial disability compensation will be construed as temporary total disability compensation for purposes of the preliminary hearing statute. See Brown v. Lawrence-Douglas County Board of Health, Docket No. 205,848 (March 1996).

The Appeals Board's jurisdiction is limited when a party appeals from an administrative law judge's decision contained in a preliminary hearing order. The appealing party has to either allege that the administrative law judge exceeded his jurisdiction pursuant to K.S.A. 44-551(b)(1), as amended, or raise a jurisdictional issue listed in K.S.A. 44-534a(a)(2), as amended. Whether the claimant proved he was entitled to either temporary total or temporary partial disability compensation is not an issue listed in K.S.A. 44-534a(2), as amended, that grants the Appeals Board review of a preliminary hearing order. Additionally, the preliminary hearing statute, K.S.A. 44-534a(a)(2), as amended, specifically authorizes the administrative law judge to grant or deny temporary total disability compensation or medical treatment pending a full hearing on the matter. Therefore, the Administrative Law Judge did not exceed her jurisdiction when she denied claimant's request for temporary total disability compensation.

The claimant contends that the Appeals Board has jurisdiction to review this preliminary hearing Order pursuant to K.S.A. 44-551(b)(1) and K.S.A. 44-555c(a) as interpreted by the Kansas Court of Appeals in the case of Winters v. GNB Battery Technologies, 23 Kan. App. 2d 92, 927 P.2d 512 (1996). The Appeals Board finds that claimant's analysis of the Winters case is misplaced. The Court of Appeals in Winters cited another Court of Appeals decision, Shain v. Boeing Military Airplanes, 22 Kan. App. 2d 913, 924 P.2d 1280 (1996), when it held that K.S.A. 1995 Supp. 44-551(b)(1) states the general rule that all acts by an administrative law judge are subject to review by the Appeals Board upon timely written request. However, neither order that was appealed from in Shain or Winters was from a preliminary hearing pursuant to K.S.A. 44-534a. As is the situation in this case, all appeals from preliminary hearings are not subject to review by the Appeals Board unless the administrative law judge allegedly exceeded his or her jurisdiction or a jurisdictional issue listed in K.S.A. 44-534a, as amended, is raised.

Therefore, the Appeals Board finds it lacks jurisdiction to review this preliminary hearing Order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the

appeal of the claimant in this matter, should be, and is hereby, dismissed and the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes dated July 15, 1997, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of August 1997.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director